

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, declaring six millsites abandoned and void. NM MC 92577 through NM MC 92582.

Reversed.

1. Millsites: Generally -- Mining Claims: Millsites

Under 43 CFR 3833.2-1(d), a millsite owner is not required to file a notice of intention to hold the site until Dec. 30 of the year following the year in which the owner files the notice of location for the site with BLM for recordation. A BLM decision declaring six millsite claims abandoned and void because notices of intention to hold, filed at the same time as the notices of location for the sites, are defective will be reversed.

APPEARANCES: John W. Reynolds, Esq., Silver City, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Louis L. Osmer, Jr., 1/ has appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated

1/ The BLM decision was addressed to Louis L. Osmer, Jr., et al. The notice of appeal filed by counsel for appellants is captioned "Appeal of Louis L. Osmer, Jr., et al.," but no further listing of the appellants is provided.

January 22, 1981, declaring six millsite claims, NM MC 92577 through NM MC 92582, 2/ abandoned and void.

The BLM decision stated in part:

According to the most recent data the owners of the * * * claims are as follows:

Louis L. Osmer, Jr.
Raymond J. McCoun
John H. Dogendorf

The regulations in 43 CFR 3833.2-3(b) required that "A notice of intention to hold a mill site shall be in the form of a letter signed by the owner or owners of such sites" also, 43 CFR 3833.2-3(b)(3) requires that "In the case of a mill site, a statement that a claim-related site will continue to be used for mining or milling purposes. . ."

Since the Notice of Intent to Hold filed October 16, 1979 does not meet the requirements of the above cited regulations, it shall be deemed conclusively to constitute an abandonment of the mill site claims and they are hereby declared void.

Louis L. Osmer 3/ filed copies of the notices of location and the notices of intention to hold, as well as a map, of the millsites at issue herein on October 16, 1979. Examination of these documents reveals that the original locators of the six millsites were Louis L. Osmer, Sr., Raymond J. McCoun, and John H. Dogendorf. The 1979 notices of intention to hold the sites were executed by M. L. Osmer on October 15, 1979. The location map for the sites bears the notation "Present Owner, Mary Louise Osmer."

[1] Departmental regulation, 43 CFR 3833.2-1(d), requires that the owner of a millsite file a notice of intention to hold the millsite with BLM "on or before December 30 of each year following the year of recording" the notice of location with BLM. Appellants filed their notices of location timely on October 16, 1979, and therefore were not required to file notices of intention to hold the sites until

2/ The millsites at issue are:

<u>Serial Number</u>	<u>Name of Mill Site</u>	<u>Date Located</u>
NM MC 92577	Amazon	5-11-1957
NM MC 92578	Austin	5-11-1957
NM MC 92579	Bull Dog	5-11-1957

3/ We assume the filings at issue herein were made by Louis L. Osmer, Jr.

December 30, 1980. Accordingly it was improper for BLM to declare the sites abandoned on the basis of the allegedly defective 1979 filings. 4/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is reversed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

4/ If M. L. Osmer, who executed the 1979 notices of intention to hold the millsites, is Mary Louise Osmer, who was designated as present owner of the sites on the map filed with BLM, then BLM was in error as to this basis for its decision. We note that the 1980 notices of intention to hold the millsites were signed and timely filed by Mary Louise Osmer. Also, because of our disposition it is unnecessary to examine any question relating to applicability of notices of intention to hold to millsites as required by regulations.